IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2364 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE ANIL R. DAVE
HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MOHAMMAD SHAKIR ABDUL KADIR PATARIYA - Appellant(s)
Versus
THE STATE OF GUJARAT - Opponent(s)

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Appearance :
MR MH KHARADI with MR MAKBUL I MANSURI for Appellant(s) : 1,
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE ANIL R. DAVE

and

HONOURABLE MR.JUSTICE KS JHAVERI

Date : 20/06/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE ANIL R. DAVE)

Being aggrieved by the order dated 16.10.2006 passed below Exh. 1 in Criminal Misc. Application No. 3514 of 2006, this appeal has been preferred by the appellant under the provisions of sec. 34(4) of the Prevention of Terrorism Act, 2002 (hereinafter referred to as 'POTA').

2. The appellant-accused had been arrested in connection with an offence registered with Godhra Railway Police Station, being Crime Register No. I-9/2002 for the offences punishable under sections 143, 147, 148, 149, 337, 338, 438, 302 and 307 of Indian Penal Code, sections 141, 150, 152 of the Indian Railways Act, sections 3 and 4 of the Prevention of Damage to the Public Properties Act and sections 3(2) and (3) of POTA.

3. It is pertinent to note that Criminal Misc. Application No. 2499 of 2004 for bail filed by the appellant before the Special Judge, POTA at an earlier point of time had been rejected on 23.8.2004. Being aggrieved by the said order, the appellant had filed Special Criminal Application No. 1076 of 2004 before this court, but the said special criminal application had been withdrawn so as to file a fresh application before the Special Judge (POTA). Thereafter, Criminal Application No. 1639 of 2005 had been filed praying for bail, which had been rejected on 29.7.2005. Against the said order rejecting bail, Criminal Appeal No. 2144 of 2005 was preferred in this court, which was subsequently withdrawn.

4. Once again, an application for regular bail under sec. 49(7) of POTA and under sec. 439 of Criminal Procedure Code had been filed by the appellant before the Special Judge (POTA) praying that he be enlarged on bail considering the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2000 (hereinafter referred to as 'the Juvenile Act') also. The said application was rejected by an order dated 16.10.2006, and being aggrieved by the order of rejection, the present appeal has been filed by the appellant.

5. Learned advocate Shri M.I. Mansuri has appeared for the appellant, whereas learned APP Shri K.T. Dave has appeared for the opponent.

6. It has been submitted by the learned advocate appearing for the appellant that the impugned order passed by the Special Judge (POTA) is unjust, illegal and improper. It has been mainly submitted that looking to the provisions of sec. 12 of the Juvenile Act, the appellant ought to have been enlarged on bail. It has been also submitted that looking to the age of the appellant, he ought to have been released on bail.

7. On the other hand, the learned APP has submitted that the impugned order passed by the Special Judge (POTA) is just, legal and proper as the court below

has duly considered the provisions of sec. 12 of the Juvenile Act as well as the provisions of POTA.

8. We have heard the learned advocates at length and have considered the order passed by the court below. Looking to the facts of the case, involvement of the appellant is apparent as the appellant-accused had made a statement under sec. 32 of POTA with regard to the role played by him in the alleged offence. Moreover, statements of co-accused Janvir Bin Yamin Behra and other co-accused given under sec. 164 of the Criminal Procedure Code had also been considered by the Special Judge (POTA), which indicated that the appellant had played a vital role in commission of the offences alleged against him. From the statements recorded of the other co-accused, it has been found that the appellant was found near Coach No. S-2 and S-6, which had been set ablaze and which resulted into death of several persons.

9. It is also pertinent to note that an earlier application made by the appellant for bail had been rejected on merits.

10. The Special Jugde, (POTA) has duly considered the provisions of sec. 12 of the Juvenile Act and provisions of sec. 56 of POTA while coming to the conclusion that the appellant should not be enlarged on bail. We are in agreement with the view of the learned Special Judge, (POTA) that the provisions of POTA have an overriding effect over the provisions of

the Juvenile Act.

11. Looking to the aforesaid facts and in view of the fact that the appellant has already been sent to the Observation Home, in our opinion, no case has been made out by the appellant for being enlarged on bail. The statement made by the appellant-accused under sec. 32 of POTA as well as statements made under sec. 164 by the other co-accused cannot be ignored, as impliedly suggested by the learned advocate appearing for the appellant. Looking to the gravity of the offence, in our opinion, the Special Judge (POTA) is absolute justified in saying that the release of the appellant is likely to bring him into association with criminals or might expose him to moral, physical or psychological danger or that might defeat the ends of justice.

12. For the sound reasons recorded by the Special Judge (POTA) and for the reasons recorded hereinabove, in our opinion, the Special Court POTA has rightly rejected the application of the appellant by its impugned order.

13. We are sure that as the appellant has already been sent to the Observation Home, he shall be taken care of and the provisions of sec. 18 of the Juvenile Act shall also be taken care of.

For the reasons stated hereinabove, in our opinion, the impugned order is just, legal and proper and, therefore, the appeal is dismissed.

(Anil R. Dave, J.)

(K.S. Jhaveri, J.)

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